

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Knowlton Construction Company, :
Plaintiff, :
v. : Case No. 2:07-cv-0748
Liberty Mutual Insurance : JUDGE MARBLEY
Company, :
Defendant.

REPORT AND RECOMMENDATION

On June 29, 2007, plaintiff Knowlton Construction Company filed a complaint in the Logan County Court of Common Pleas against defendant Liberty Mutual Insurance Company. Among other things, the complaint sought a declaration that Liberty Mutual was required to defend and indemnify Knowlton in a state-court action involving Knowlton's work on the Belmont Correctional Institution. Knowlton's complaint also pleads state-law claims sounding in breach of contract and bad faith and seeks damages on both claims.

Liberty Mutual removed the case to this Court pursuant to 28 U.S.C. §§1441 and 1446 on the basis of diversity of citizenship. Knowlton has filed a motion requesting the Court not to exercise its jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §2201, and to remand this case to the Logan County Court of Common Pleas. The jurisdictional requirements of 28 U.S.C. §1332 (complete diversity of citizenship and more than \$75,000 in controversy) are not contested. For the following reasons, it will be recommended that the motion to remand be denied.

I.

In support of its motion for remand, Knowlton relies on a

recent decision of the Sixth Circuit Court of Appeals holding that a district court abused its discretion in exercising jurisdiction over a declaratory judgment action that sought a determination of insurance coverage for an underlying state wrongful death suit. See Travelers Indem. Co. v. Bowling Green Professional Assoc., PLC, 495 F.3d 266 (6th Cir. 2007).

Travelers noted that the language of the Declaratory Judgment Act grants a district court "discretion in determining whether and when to entertain...[such an action], even when the suit otherwise satisfies subject matter jurisdictional prerequisites." Id. at 271 (citations omitted). The Court of Appeals, relying on certain factors identified in two prior decisions, Grand Trunk W.R.R. Co. v. Consolidated Rail Co., 746 F.2d 323, 326 (6th Cir. 1984) and Scottsdale Ins. Co. v. Roumph, 211 F.3d 964, 967 (6th Cir. 2000), concluded that these factors weighed against the district court's decision to exercise its discretionary jurisdiction under the Declaratory Judgment Act. Id. at 271-73. Briefly stated, Travelers stands for the proposition that when the declaratory judgment action filed in federal court would still leave issues unresolved in the underlying state court action, where state law provides the rule of decision in the declaratory judgment case, where the factual development of issues in the state court will influence the coverage issue, and where the parties have adequate remedies in the state court system, a district court abuses its discretion in exercising jurisdiction.

Liberty Mutual argues that Travelers can be distinguished because this case was initially brought in state court by the insured rather than the insurer so that the federal Declaratory Judgment Act is not implicated. See Edwards & Caldwell, LLC v. Gulf Ins. Co., slip op., 2005 U.S. Dist. LEXIS 27506 (D.N.J. Aug. 29, 2005). In Edwards & Caldwell, the court held that because

the plaintiff had not invoked the federal Declaratory Judgment Action in either its state-court complaint or following removal, the line of cases calling for the decline of jurisdiction in declaratory judgment actions involving only state-law issues was inapplicable. Id. at p. 2. Accordingly, the court refused to remand the case. Id.

II.

In the Court's view, Edwards & Caldwell is inconsistent with Sixth Circuit case law and is not well-reasoned. In National Union Fire Ins. Co. of Pittsburgh, PA v. Rodriguez, slip op., 2004 WL 3257089 (E.D. Mich. Feb. 12, 2004), the court followed a line of decisions in other circuits holding that the Declaratory Judgment Act is implicated in diversity cases whether an action is originally filed in federal court or removed there by the defendant. (citations omitted). See also University of Georgia Athletic Assn. v. Fireman's Fund Ins. Co., slip op., 2006 WL 1652482 at p.2 (M.D. Ga. Jun. 13, 2006) (The rationale underlying a decision not to exercise jurisdiction under the Declaratory Judgment Act in an original proceeding applies with equal force to the remand of a removed state-court declaratory judgment action). Moreover, in at least one reported decision, a court in the Sixth Circuit remanded a case to the state court from which it had been removed after considering the factors used to determine whether to entertain or dismiss the case under the Declaratory Judgment Act. Maryland Ins. Group v. Roskam Baking Co., 6 F.Supp.2d 670, 673 (W.D. Mich. 1998).

This analysis, however, does not end the inquiry into whether Travelers is distinguishable. Both parties agree that this case differs from Travelers because Knowlton asserted two claims for monetary damages in addition to its claim for declaratory relief. The parties ascribe contrasting significance to this fact, but neither supports its position with

any sort of legal analysis. In the Court's view, the presence of these claims is dispositive of the motion to remand (although not necessarily dispositive of whether the Court should exercise jurisdiction over the declaratory judgment claim).

The United States Supreme Court has recognized the distinction as an important one.

We have...held that in cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court. By contrast, while we have held that federal courts may stay actions for damages based on abstention principles, we have not held that those principles support the outright dismissal or remand of damage actions.

Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 721 (1996).

In this case, Knowlton has sought the remand of this case to state court despite the fact that the complaint includes damage claims as well as discretionary relief. This Court has jurisdiction over Knowlton's damage claims which exists separately from Knowlton's claim for declaratory relief. That is, if the complaint had simply requested damages for breach of contract and bad faith, the case could still have been removed because all of the jurisdictional requirements of §1332(a) are met with respect to those claims.

The exercise of jurisdiction over damage claims is mandatory and not discretionary as it is for the declaratory judgment claim. See United National Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1112 (9th Cir. 2001) ("The appropriate inquiry for a district court in a Declaratory Judgment Act case is to determine whether there are claims in the case that exist

independent of any request for purely declaratory relief, that is, claims that would continue to exist even if the request for a declaration simply dropped from the case")(quoting Snodgrass v. Provident Life and Acc. Ins. Co., 147 F.3d 1163, 1167-68 (9th Cir. 1998)); if so, "the district court abused its discretion by remanding to state court." Id. at 1113. See also Government Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1225-26 n.6 (9th Cir. 1998)("Because claims of bad faith, breach of contract, breach of fiduciary duty and rescission provide an independent basis for federal diversity jurisdiction, the district court is without discretion to remand or decline to entertain these causes of action"); Southwind Aviation, Inc. v. Bergen Aviation, Inc., 23 F.3d 948, 951 (5th Cir. 1994)(Inclusion of coercive remedies for breach of contract indisputably removed suit from ambit of declaratory judgment action).

III.

Here, then, the Court is faced with a request to remand an entire case to state court when the removal was proper, and where the Court has a mandatory obligation to exercise jurisdiction over two of the three claims in the complaint. Such remand is simply improper. The Court has no need, for purposes of ruling on the motion for remand, to determine if it should ultimately exercise jurisdiction over the declaratory judgment claim, because that determination is irrelevant to the question of remand. Accordingly, this Court RECOMMENDS that the motion to remand (doc. #9) be DENIED.

PROCEDURE ON OBJECTIONS

Any party may, within ten (10) days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 91-3, pt. I., F., 5. The motion must specifically designate the order or

part in question and the basis for any objection. Responses to objections are due ten days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

/s/ Terence P. Kemp
United States Magistrate Judge